CRL.A.621/2000

Bail Slip:-

The Appellant/Accused (A1) Viz., Raji was directed to be enlarged on bail by the order of this Court dated 12.10.2000 made in CRL.MP.4654/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-01-2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl. Appeal No.621 of 2000

Raji .. Appellant.

Versus

State by Inspector of Police,
Madurantakam Police Station
Kancheepuram District. .. Respondent.

For Appellant : Mr.T.R.Ravi

For Respondent : Mr.N.Kumanan
Government Advocate

PRAYER: Appeal against the conviction and sentence passed by the learned Principal Sessions Judge, Chengalpattu in S.C.No.131 of 1998 dated 22.06.2000.

J U D G M E N T

The appellant is first accused in the case. The appellant along with his father was originally charged for an offence punishable under Sections 498A and 302 IPC. On conclusion of the trial, A-2 was acquitted and the appellant alone was convicted under Section 304-B and 498 A IPC and was sentenced to undergo imprisonment for seven years and two years respectively.

2. The case of the prosecution is that the appellant is the husband of the deceased. On 27.04.1996 at about 6.00 p.m, the deceased died at the residence of the appellant. On coming to know about the death of the deceased, P.W.1 lodged a complaint on 28.04.1996 at about 10.00 a.m to P.W.11. Inspector of Police and the same was registered as Ex.P-1 in Crime No.425 of 1996 under Section 174 Cr.P.C. Ex.P-7, the printed FIR was sent to the Court and superior officials. On receipt of Ex.P-7, the RDO took up initial enquiry, as the death of the deceased occurred within seven years of the marriage. Ex.P-8 is the inquest report and after

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examination of the witnesses, a report has been filed under Ex.P-15. Since the RDO has gone abroad, those reports have been marked through P.W.13, P.A to Sub Collector.

3. P.W.14 took up the investigation on 28.04.1996 and reached the scene of occurrence and prepared Observation Mahazar Ex.P-2. He has recovered M.O.1-Polyster Saree from the house of the appellant in the presence of P.W.3 and Ex.P-16 is the rough sketch. After recording the statements of P.W.1 to P.W.5, the offence was altered from 174 Cr.P.C to one under Section 498-A and 304 B IPC and the alteration report-Ex.P-18 was sent to the higher officials. The accused was arrested on 30.04.1996 at about 11.30 pm and was remanded to judicial custody. On conclusion of the investigation, P.W.14 filed a final report before the learned Magistrate.

4. Father and mother of the deceased was examined as P.W.1 and P.W.2, respectively. It is alleged that there were frequent quarrel between the appellant and the deceased. The marriage was performed by P.W.1 after selling their land and jewels. A child was born to the deceased and the appellant was quarrelling with the deceased to bring more dowry. On receiving a message that the deceased died due to consumption of poison, P.W.1 reached her residence and found her dead body, resulting in the complaint given to the police, Ex.P-1. This evidence of P.W.1 is corroborated by P.W.2, who is the wife of P.W.1. PW.3 is the son-in-law of P.W.1, who has been examined to substantiate that there were frequent quarrel between the appellant and the deceased. P.W.4 and P.W.5 are the neighbours of the appellant. They have been examined to substantiate that they are eye witnesses in the case and they witnessed the smothering and strangulation of the appellant on the instructions of the second accused. However, both the witnesses have not supported the case of the prosecution and they have been treated hostile. P.W.6 is the mahazar witness for the preparation of observation and recovery mahazars. P.W.7 is the medical officer who states that on 27.04.1996 the deceased was brought to the Government Hospital at 6.55 p.m for treatment and on examination the deceased was found dead and it was informed to them. The deceased was taken back without the permission of P.W.7. P.W.8 is the post mortem Doctor who has conducted autopsy over the dead body of the deceased on 29.04.1996 at about 11.15 a.m. Even at the time of conducting postmortem the medical officer noticed that the body of the deceased was under a decomposed status. Ex.P-4 is the postmortem report. Ex.P-5 is the report received regarding the hyoid bone and Ex.P-6 is the final opinion. P.W.9 is the Doctor attached with the Forensic Department, who has given his opinion regarding the hyoid bone. Ex.P-5 is the report given by him, wherein it is stated that the hyoid bone is in tact. P.W.11 is the Inspector of Police who has registered the case. P.W.12 is the Deputy Superintendent of Police, who has conducted initial investigation and has recorded the statement from the medical officers. P.W.13 is the P.A to Sub Collector, who has given evidence on behalf of the RDO. P.W.14 is the final investigating officer, who has filed the final report.

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5. The learned trial Judge on conclusion of the trial, questioned the accused under Section 313 Cr.P.C for which the appellant claimed innocence. On a perusal of the oral and documentary materials produced by the prosecution and on hearing the arguments of both the counsel, the learned trial Judge convicted the accused as aforementioned and aggrieved against that the present appeal has been filed before this Hon'ble Court.

6. The learned counsel appearing for the appellant submits that P.W.8, the post mortem Doctor has not given a positive opinion regarding the cause of death. Even after receiving the opinion from the forensic expert, the medical officer has stated that he is unable to give any opinion regarding the cause of death. The opinion of the forensic expert is as follows:

> "The Hyoid bone examination shows nil antemortem or Post-moprtem fracture. Hyoid intact."

7. Learned counsel for the appellant relied on the observation mahazar, wherein it has been stated that the dead body of the deceased was in a sitting posture with a saree tied on her neck with one end and the other end on the frame of the roof.

8. Learned counsel appearing for the appellant relied on Ex.P-15, the report of the RDO, wherein, it has been stated as follows:

> "I have conducted the inquest under Section 174 Cr.P.C at Madurantakam Government Hospital on 29.04.1996 by 10.00 a.m. The body was decomposed. No visible signs of injuries could be made out on the body. The cause of death could not be prima facie ascertained."

9. It is further stated that apart from the evidence of P.W.1 and P.W.2, there is no postitive material to come to a conclusion that the death of the deceased is due to homicidal violence. Even the evidence of P.W.1 and P.W.2 have been shattered by cross examination. Though it has been stated that the appellant has demanded dowry as jewel and cash, that the same has not been stated before the police at the time of investigation and it is an improvement during the course of trial.

10. In so far as the actual occurrence is concerned, PW.4 and P.W.5 have been examined as eye witnesses in the case and they have turned hostile. The other witnesses namely P.W.3 and P.W.10 who are the son-in-law and daughter of P.W.1 also not supported the case of the prosecution. The medical evidence also is not in support of the case of the prosecution. In such circumstances, the finding of the learned trial Judge is based on surmises and conjectures and there is no positive material to substantiate the offence.

11. I have heard the learned Government Advocate in this regard and I have perused the materials available on record.

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12. Charges have been framed for an offence punishable under Sections 498 A and 302 IPC. To substantiate the charge that the deceased was ill-treated and demanded dowry, on a perusal of the evidence of P.W.1 and P.W.2, I find that it is contradictory with their earlier statements and it is not substantiated.

13. In so far as the actual offence of homicide on the deceased is concerned, the witnesses examined are P.W.4 and P.W.5 and they have been treated as hostile. P.W.3 and P.W.10 who speak about motive also turned hostile. The medical evidence of P.W.7 to P.W.9 do not support the case of the prosecution version that the death has been caused due to homicidal violence. The hyoid bone is intact and no superficial injury found on the neck of the deceased.

14. On a perusal of the Observation Mahazar and report of the RDO, one can safely reach a conclusion that the deceased had committed suicide. To support such conclusion the statement of the appellant given to the RDO during the course of his enquiry can be taken into consideration. The appellant in that statement has narrated the quarrel between him and his wife prior to the occurrence and the deceased, thereafter had committed suicide by hanging.

15. In such circumstances, I am of the considered view that the conclusion reached by the trial Court is erroneous and the offence alleged by the prosecution is not made out. Therefore, the conviction and sentence passed against the appellant is set aside and the appellant is acquitted of all the charges. The bail bonds, if any, executed by the accused shall stand cancelled.

csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge,
Chengalpattu.

2. The Inspector of Police,
Maduranthakam Police Station, Kancheepuram District.

3. The Judicial Magistrate, Maduranthagam.

4. -do- Thro' The Chief Judicial Magistrate, Chengalpet.

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5. The Superintendent Central Prison, Chennai.

6. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. T. R. Ravi, Advocate SR No. 909

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SR/14.2.2007

Crl. Appeal No.621 of 2000

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